

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOROTEO POLANCO,	:	
	:	
Plaintiff,	:	11 Civ. 3024 (DAB) (HBP)
	:	
-against-	:	REPORT AND
	:	<u>RECOMMENDATION</u>
TIANO'S CONSTRUCTION CORP.,	:	
<u>et al.</u> ,	:	
	:	
Defendants.	:	
	:	
-----X	:	

PITMAN, United States Magistrate Judge:

TO THE HONORABLE DEBORAH A. BATTIS, United States
District Judge,

The pro se plaintiff commenced this action on April 28, 2011 by filing a summons and complaint. My review of the file in November, 2011 disclosed that although the office of the Pro Se Clerk mailed a Service Package to plaintiff on June 15, 2011, no proof of service of the summons and complaint had ever been filed and it appeared that the summons and complaint had not, in fact, been served. Accordingly, I issued an Order to plaintiff on November 16, 2011 directing that plaintiff show cause on or before December 16, 2011 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day

time limit established by Rule 4(m), Fed. R. Civ. P. Specifically, my November 16, 2011 Order provided:

Given the failure to submit the pretrial order on time and the lack of activity in the case, it does not appear that plaintiff continues to have interest in pursuing the case. I appreciate that plaintiff is an inmate and is proceeding pro se; nevertheless if plaintiff does not prosecute his action, no one else will.

Accordingly, no later than March 1, 2010, plaintiff is to advise me whether he has any interest in prosecuting this action and, if so, he is to provide a firm date on which he will submit the Pretrial Order. **IF I DO NOT HEAR FROM PLAINTIFF BY December 16, 2011, IT IS MY INTENTION TO ISSUE A REPORT AND RECOMMENDATION RECOMMENDING THAT THIS ACTION BE DISMISSED ON THE GROUND THAT IT HAS BEEN ABANDONED.**

(Emphasis in original.)

A copy of my November 16 Order was mailed to plaintiff at the address provided when he commenced this action -- the only address plaintiff ever provided to the Court. It has not been returned as undeliverable.

Although five of the defendants -- Lloyd Ambinder, Esq., Pythagoras General Contracting Corp., Safeco Insurance Company of North America, Lumbermens Mutual Casualty Company and St. Paul Mercury Insurance Company -- subsequently appeared in this action, plaintiff has not, to date, filed proof of service with respect to GBE Alasia Contracting Corp., has not explained

why service has not been completed with respect to this defendant and has not contacted my chambers or the Court in any way concerning the completion of service. Accordingly, I respectfully recommend mea sponte that this action be dismissed against defendant GBE Alasia Contracting Corp. on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.

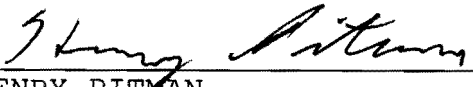
OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (14) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Deborah A. Batts, United States District Judge, Room 2510, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Batts. FAILURE TO OBJECT WITHIN TEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38

(2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
May 21, 2012

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

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